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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/375,451	08/17/1999	GUY L. MCCLUNG III	GLM-III	5100

7590 06/28/2002

GUY L MCCLUNG  
III SUITE 347  
16690 CHAMPION FOREST DRIVE  
SPRING, TX 773797023

EXAMINER

ALVAREZ, RAQUEL

ART UNIT PAPER NUMBER

3622

DATE MAILED: 06/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/375,451	<b>Applicant(s)</b> MCCLUNG III, GUY L.	
	<b>Examiner</b> Raquel Alvarez	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 April 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

1. This office action is in response to amendment filed on 4/19/02.
2. Claims 21-37 have been cancelled. Claims 38-54 have been added.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 38-40, 43-50, 52 and 54 rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al,(6,249,772 hereinafter Walker).

With respect to claims 38, 40, 43-50, 52 and 54, Walker teaches guaranteeing a consumer a best price on an item purchased in a first transaction at a first price (Abstract). Recording the first price and information identifying the consumer (i.e. the customer is charged a store price )(col. 22, lines 17-33); monitoring the sales price of the item for a predetermined time period after purchase of the item by the consumer in the consummated final first transaction (i.e. The item is purchased at a store price and then the system checks to see if there is an established price for the item )(col. 22, lines 17-33); noting any price lower than the first price for the item during the predetermined time period following the purchase of the item (col. 22, lines 17-33); calculating a money-value difference between the first price and said any price lower than the first price (i.e. the difference between the store price (regular price) and the established price (discounted price) is calculated (col. 22, lines 17-33); refunding to the consumer an amount equal to the money-value difference (i.e. the customer is refunded the difference between the a store

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price and the established price)(col. 22, lines 17-33); wherein the item is purchased via a host system and the host system records the first price and information identifying the customer; the host system conducts the monitoring, noting, and calculating steps; and the host system provides the refund to the consumer (Col. 22, lines 17-33); and wherein the host system provides the refund by crediting an account of the consumer (col. 22, lines 17-33).

With respect to claim 39 , Walker further teaches that the item is purchased by the consumer at a location of the vendor (Figure 8B).

With respect to claim 46, Walker teaches that only items for sale in a pertinent geographic area are taken into account in the noting step (Figures 6B-6C).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 41, 42, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al.(6,249,772 hereinafter Walker).

With respect to claim 41, Walker does not specifically teach that the account is an account of the consumer with the host system. It is obvious and well known to keep an account with the host to obtain the advantages of purchasing through the host system. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included an account with the host system for the above mentioned advantages.

Claim 42 further recites that a refund is made for each subsequent sales price lower than the first price. Since, walker teaches guaranteeing a consumer the best prices then it would have been obvious to a person of ordinary skill in the art to refund the consumers for each subsequent sales price lower than the first price because such a modification would allow the customer to get the lowest price each time the product is purchased.

Claim 51 further recites duplicating any incentive accompanying sales of the item after the first transaction. Official notice is taken that is old and well known to duplicate an incentive of the item after an item has been purchased in order to further motivate customers to purchase the item. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included duplicating any incentive accompanying sales of the item after the transaction for the above mentioned advantages.

Claim 53 further recites providing a warranty to the consumer. Since, Walker is a system and method pf selling an item and like any conventional method of selling a product often provides a warranty on the item purchased in order to assure the customer the integrity of a product and of the maker's responsibility for the repair or replacement of defective parts. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included providing a warranty to the consumer for the above mentioned advantages.

#### ***Response to Arguments***

5. Applicant's arguments filed 4/19/02 have been fully considered but they are not persuasive. The Applicant argues that Walker does not teach guaranteeing a price to a consumer after a consummated transaction. Examiner disagrees with Applicant. The Walker patent

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contains more than one embodiment. The Examiner wants to point the Applicant to the embodiment cited in the previous office action. On column 22, lines 17-32, Walker teaches **rather than charging the customer the established price in real time, the difference between a store price and the established price could be made to appear as either a rebate on the customer's credit card bill or as a check that the central controller mails or otherwise delivers to the customer**". The customer pays a regular price or a store price. After the customer purchases the item, the central controller checks or monitors the price to note that there is an established or discounted price for the item, if there is an established price stored then the customer will be refunded accordingly and the store will be billed for the difference in price. Therefore in Walker the customer is charged the regular price and then he or she will be refunded, the difference between the store price and the noted established price. The Examiner asserts that Walker anticipates the claimed invention.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


**Point of contact**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W Stamber can be reached on (703)305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

R.A.  
June 24, 2002

  
ERIC W. STAMBER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600